

**Notice of Allowability**

Application No.

10/088,045

Applicant(s)

THONNARD, JOELLE

Examiner

Padmavathi v Baskar

Art Unit

1645

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 12/22/03.
2. ☒ The allowed claim(s) is/are 27, 29, 32, 34, 35, 38, 43, 44, 46, 56, 57, 58 and 59 have been renumbered 1-13 respectively.
3. ☐ The drawings filed on \_\_\_\_\_ are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All    b) ☐ Some\*    c) ☐ None    of the:
    1. ☐ Certified copies of the priority documents have been received.
    2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
    3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
  6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
    - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
      - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
    - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

**Attachment(s)**

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO-1449 or PTO/SB/08), Paper No./Mail Date \_\_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit of Biological Material
5. ☐ Notice of Informal Patent Application (PTO-152)
6. ☐ Interview Summary (PTO-413), Paper No./Mail Date \_\_\_\_\_
7. ☒ Examiner's Amendment/Comment
8. ☐ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_.

## **DETAILED ACTION**

### ***Amendment***

1. Applicant's after amendment filed on 12/22/04 is acknowledged. The examiner acknowledges the various amendments made to the specification in response to the previous office action.

### ***Status of Claims***

2. Claims 27, 29, 32, 34, 35, 38 and 43 have been have been amended.  
New claims 56-59 have been added.  
Claims 27, 29, 32, 34, 35, 38, 43, 44, 46 and 56-59 are pending in the application.

### ***Rejections Withdrawn***

4. In view of amendment to the claims and the arguments of record the rejection of claims under 35 U.S.C. 112, first paragraph (written description) is withdrawn.
5. In view of amendment to the claims and the arguments of record, the rejection of claims under 35 U.S.C. 112, first paragraph, scope of enablement is withdrawn.
6. In view of amendment to the claims and the arguments of record, the rejection of claims under 35 U.S.C. 102(b) as being anticipated by Hoehn et al (Infection And Immunity 1992, 60; 4695-4703 (1992) and Accession Number Q02219.  
is withdrawn. This rejection is withdrawn because the newly amended claims 27 (b) and 34 are drawn to specific immunogenic fragments of 15 or 20 contiguous amino acid of SEQ.ID.NO: 2. The immunogenic fragments as claimed are neither disclosed nor taught by any prior art.
7. In view of amendment to the claims and the arguments of record, the rejection of claims under 35 U.S.C. 102(b) as being anticipated by Helminen et al 1994 (J.Infec.Dis, 170;

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- 867-872) is withdrawn. This rejection is withdrawn because Helminen et al 1994 do not disclose a recombinant polypeptide comprising the amino acid sequence, SEQ.ID.NO: 2.
8. The instant claims define a novel recombinant polypeptide SEQ.ID.NO: 2 from *Moraxella catarrhalis*. This purified recombinant BASB109 polypeptide has been shown to bind to a pool of human sera from children infected with various clinical isolates *M catarrhalis* by Western blot analysis. Therefore, this antigen is useful for diagnostic assays for detecting the infection caused by various clinical strains of *Moraxella catarrhalis*.

**Remarks**

9. Claims 27, 29, 32, 34, 35, 38, 43, 44, 46 and 56-59 are allowed and have been renumbered as 1-13 respectively.


**Conclusion**

10. Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Padma Baskar Ph.D., whose telephone number is ((571) 272-0853. A message may be left on the Examiner's voice mail system. The Examiner can normally be reached on Monday to Friday from 6.30 a.m. to 4.00 p.m. except First Friday of each bi-week.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Lynette Smith can be reached on (571) 272-0864. Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (571) 272-1600. The RightFax number for submission of before-final amendments is (703) 872-9306. The RightFax number for submission of after-final amendments is (703) 872-9307.

Padma Baskar Ph.D.

3/29/04

  
MARK NAVARRO  
PRIMARY EXAMINER